

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with Gulf Power Company in Okaloosa County by Choctawhatchee Electric Cooperative, Inc. | DOCKET NO. 100304-EU
ORDER NO. PSC-11-0217-PHO-EU
ISSUED: May 12, 2011

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on May 9, 2011, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

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On behalf of Choctawhatchee Electric Cooperative, Inc. (CHELCO)

RUSSELL A. BADDERS, and STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, 501 Commendencia Street, Pensacola, FL 32502
On behalf of Gulf Power Company (Gulf).

RALPH R. JAEGER, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

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Advisor to the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

On May 24, 2010, Choctawhatchee Electric Cooperative, Inc. (CHELCO) filed with the Commission its Petition to Resolve a Territorial Dispute (Petition) between it and Gulf Power Company (Gulf) in Okaloosa County involving the Freedom Walk development (Freedom Walk). On June 18, 2010, Gulf filed its answer to that Petition.

Despite efforts to reach a compromise, the parties were unable to reach an agreement. Therefore, the dispute was set for formal hearing and Order No. PSC-10-0615-PCO-EU (Order Establishing Procedure), issued October 13, 2010, set the procedures to be followed in this case and the controlling dates. The Order Establishing Procedure was modified by Order No. PSC-10-0708-PCO-EU, issued November 29, 2010 (changed hearing dates and controlling dates), and by Order No. PSC-11-0186-PCO-EU, issued April 6, 2011 (provided for the filing of

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supplemental direct testimony by CHELCO to correct an error discovered in its original direct testimony, and allowed additional time to file rebuttal testimony and Prehearing Statements).

A Prehearing Conference was held on May 9, 2011, which resulted in the issuance of this Prehearing Order. This Prehearing Order sets forth the agreements reached by the parties and the decisions reached by the Prehearing Officer for conducting the formal hearing scheduled for May 17 and 18, 2011.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-9, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in

the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. For those witnesses who have only one set of prefiled testimony, the summaries of their testimony shall be limited to five minutes. Those witnesses with multiple sets of testimony shall summarize all their testimony at one time, and their summaries shall be limited to seven and one-half minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit(s) may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness will present direct and rebuttal testimony together. Also, CHELCO witnesses Avery and Sullivan will present Supplemental Direct Testimony between their Direct and Supplemental Testimony.

As a result of discussions at the prehearing Conference, each witness whose name is followed by an asterisk (*) will be excused from this hearing if no Commissioner assigned to this case seeks to examine the particular witness. The parties and staff have waived cross-examination of these witnesses and have agreed that their testimony and exhibits may be admitted. Staff will attempt to notify the parties by May 12, 2011, as to whether any such witness will be required to be present at the hearing

<u>Witness</u>	<u>Proffered By</u>	<u>Issues Nos.</u>
<u>Direct and Rebuttal</u>		
Leigh V. Grantham	CHELCO	1, 2(a), 2(b), 2(c), 3, 6, 7, 8, and 9
<u>Direct, Supplemental Direct, and Rebuttal</u>		
Jonathan Matthew Avery	CHELCO	1, 3, 4, 5(a), 5(c), 6, 7, 8, and 9
<u>Direct & Supplemental Direct</u>		
Jacquelyn Nicole Sullivan*	CHELCO	4, 5 and 7
<u>Rebuttal</u>		
Dr. Martin J. Blake*	CHELCO	2, 3, 6, 8, and 9
<u>Direct</u>		
P.B. Jacob*	Gulf	9
B.H. Johnson, Jr.*	Gulf	3, 4, and 8
<u>Direct and Rebuttal</u>		
W.M. Feazell	Gulf	4, 5(a), 5(b), 5(c), 5(d), 6, and 7
<u>Direct</u>		
R.K. Harper*	Gulf	2(b)

<u>Witness</u>	<u>Proffered By</u>	<u>Issues Nos.</u>
<u>Direct and Rebuttal</u>		
T.S. Spangenberg, Jr.	Gulf	1, 2(a), 2(b), 2(c), 3, 6, 7, and 9

VII. BASIC POSITIONS

CHELCO: This docket was initiated by CHELCO because Gulf Power Company (“Gulf Power”) has expressed its intent to provide electric service to a development, known as Freedom Walk, to be built on a parcel of property which CHELCO has historically served, and because CHELCO has existing lines and facilities directly adjacent to Freedom Walk that are adequate to provide service to the area now and with previously planned upgrades, upon full build out of the Freedom Walk development. The area at issue is heavily wooded, undeveloped and surrounded by undeveloped or minimally developed property. It is by no means urbanized and is not in direct proximity to other urban areas. CHELCO has the ability to provide service to Freedom Walk through its own existing capabilities. CHELCO has a line extending into the property and lines on two sides of the property, including a three phase line along the northern boundary of the disputed territory. CHELCO would serve this area and the development from the Auburn substation, which is capable of providing adequate and reliable service now and at full build out. In order to address projected growth in the general area of the development, CHELCO has planned upgrades on a portion of the lines from the Auburn substation in its current Construction Work Plan that were developed independent of the projected development. These upgrades will be implemented to serve all anticipated growth in demand in the area, and are sufficient to meet the projected Freedom Walk load plus the previously anticipated additional load growth. Thus, CHELCO would have no additional costs to serve this area and the development. CHELCO has provided service in this general area for nearly 60 years and, in fact, has had, and currently has, members receiving service within the platted boundary of the development.

In contrast to CHELCO, Gulf Power will have to extend lines just to get to where CHELCO has an existing line, at a cost of at least \$89,000. Furthermore, Gulf does not have the capacity at its Airport Road substation necessary to serve Freedom Walk. Without an upgrade, the substation will exceed its rated capacity by 2013 with the addition of only 1880kW of Freedom Walk’s total 4700 kW load. Gulf has admitted that there are no planned upgrades to the Airport Road substation in order to serve Freedom Walk and that it has not even begun to include the anticipated Freedom Walk load in its load studies. Although Gulf has asserted that it will be performing a massive upgrade of the Airport Road substation at some unspecified time in the next 5 years, at a cost of at least \$1,600,000, it has no current timetable, no current planning document, no current

land use approvals, and no current budget. Gulf has now proposed replacing the existing “fully depreciated” 10.5 MVA transformer bank with a “fully depreciated” 12.5 MVA transformer bank at its Airport Road substation to allow it to serve Freedom Walk, at an alleged cost of \$40,000. This would also suggest the transformer banks are 25-35 years old if they are “fully depreciated.” Even with that upgrade, the demand in December 2014, with the full 4700 kW Freedom Walk load, will exceed the total rated load capacity. In short, despite Gulf’s acknowledged “existing reliability risks” and operational and maintenance issues, Gulf has no present and identifiable plan that would allow it to perform the upgrades required to serve the full projected load as quickly as CHELCO could. Gulf Power has never provided service to the property, and prior to the Freedom Walk proposal becoming known, had no plan to extend their service to the area at issue. Gulf Power’s costs to provide service to the area would be significantly greater than CHELCO’s, and any service by Gulf Power to the area of the Freedom Walk development would be an uneconomic duplication of service.

GULF: It is the basic position of Gulf Power Company that the relief sought in CHELCO’s petition should be denied and that the right to serve the Freedom Walk development should be awarded to Gulf Power Company. The Freedom Walk development will unquestionably be non-rural in nature and the land on which the development is to be built is presently non-rural in nature. Consequently, CHELCO lacks authority to serve the development under Chapter 425, Florida Statutes. Additionally, Gulf Power should be awarded the right to serve the development based on application of the factors contained in Section 366.04(2)(e), Florida Statutes, and Rule 25-6.0441(2), Florida Administrative Code. Gulf Power is capable of extending adequate and reliable electric service to the development at a cost substantially below CHELCO’s cost and the customer has unequivocally indicated its preference that Gulf Power provide electric service to the development.

STAFF: Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: What are the boundaries of the area that is the subject of this territorial dispute known as Freedom Walk Development?

POSITIONS

CHELCO: The boundaries of the area subject to this dispute are Old Bethel Road on the north, Normandy Road on the west, Jones Road on the east and a metes and bounds description on the south. The area is the development plat which is shown

as an overlay on the exhibits attached to the petition and testimony and as has been described repeatedly by CHELCO in discovery. (Grantham, Avery)

GULF: “[T]he disputed territory is a proposed new development, known as Freedom Walk. . . .” (Petition ¶ 6). The boundaries of the development are as depicted within the bold black lines on Exhibit “A” to CHELCO’s petition. “[T]he development is within the City of Crestview’s corporate limits.” (Petition ¶6) A metes and bounds description of the Freedom Walk Community Development District, which is coextensive with the boundaries of the development, is attached as page 7 of Schedule 1 of Exhibit TSS-1 to the direct testimony of Gulf Power witness Spangenberg. It is Gulf Power’s position that the development does not include any parcels outside of the city of Crestview’s corporate limits, as inclusion of any such parcels would conflict with CHELCO’s petition, the boundaries of the Freedom Walk Community Development District and the developer’s ownership interest in the property. (Spangenberg)

STAFF: No position pending further development of the record.

ISSUE 2(a): Does the Commission have jurisdiction to enforce or apply provisions of Chapter 425, Florida Statutes, in the context of the instant territorial dispute?

POSITIONS

CHELCO: No. The Commission was created by the legislature to exercise regulatory jurisdiction over electric utilities to the extent established in Chapter 366, Florida Statutes, and specifically for this matter, Section 366.04, Florida Statutes. As an administrative agency, the Commission is a creature of statute and has only those powers conferred upon it by the legislature. The powers of the Commission are measured and limited by the statute in which such powers are expressly granted or implicitly conferred. In that regard, Section 120.52(8), Florida Statutes provides that “[s]tatutory language . . . generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” The Commission has no power to act in a manner that enlarges, modifies, or contravenes the authority that the legislature has delegated to it.

The limitation on the exercise of jurisdiction by the Commission is best expressed in the case of *Cape Coral v. GAC Utilities, Inc.*, 281 So. 2d 493 (Fla. 1973), in which the Florida Supreme Court held that:

All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute. This, of course, includes the Public Service Commission. . . . As such, the Commission's powers, duties and authority are those and only those that are conferred

expressly or impliedly by statute of the State. . . . Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof, . . . and the further exercise of the power should be arrested. The Legislature of Florida has never conferred upon the Public Service Commission any general authority to regulate public utilities. Throughout our history, each time a public service of this state has been made subject to the regulatory power of the Commission, the Legislature has *first* enacted a comprehensive plan of regulation and control *and then conferred upon the Commission the authority to administer such plan.* (Emphasis in original)(Citations omitted)

Id. at 495-496; *see also, Lee County Elec. Coop. v. Jacobs*, 820 So. 2d 297, 300 (Fla. 2002). The Court in *Lee County Elec. Coop.* was clear in its ruling that the Commission's general jurisdiction established in Section 366.04(2)(b), Florida Statutes, to "prescribe a rate structure for all electric utilities" did not extend to the rate structures of rural electric cooperatives under Chapter 425. The limitations expressed in that opinion apply with equal force to the Commission's authority to construe, interpret, and apply Chapter 425 terms and conditions in the context of a territorial dispute, where the Commission's jurisdiction is one of determining "the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services." While the Commission is not necessarily limited to those precise items, it is limited to areas of inquiry established, and over which jurisdiction has been conferred, by Chapter 366, Florida Statutes. Thus, the Commission does not have jurisdiction to engage in statutory construction regarding the overall scope of the rights, powers, and duties of rural electric cooperatives, or to enforce or apply provisions of Chapter 425, Florida Statutes, in the context of the instant territorial dispute. (Grantham, Avery, Blake)

GULF: Yes. In exercising its exclusive jurisdiction to resolve territorial disputes pursuant to section 366.04, Florida Statutes, and Rule 25-6.0441, Florida Administrative Code, the Commission must necessarily determine, as a threshold matter, whether a utility seeking to serve the development possesses the authority to do so. Chapter 425, Florida Statutes, clearly and unambiguously places limitations on the purpose and powers of Florida's rural electric cooperatives. The Commission and Florida's courts have a rich history of recognizing these purposeful limitations. In fact, "[t]he case law is clear that the intent of Chapter 425, Florida Statutes, should be strongly considered in determining whether a cooperative should serve a particular area." In re: Petition of Suwannee Valley Electric Cooperative, Inc. for Settlement of a Territorial Dispute with Florida Power

Corporation, 83 F.P.S.C. 90 at *4 (Docket No. 830271-EU, Order No. 12324, Aug. 4, 1983). (emphasis supplied). In clear recognition of the statutory purpose of, and limitations on, rural electric cooperatives, the Commission has repeatedly required a threshold determination in cooperative territorial disputes of whether the area in dispute is “rural” in nature. For example, in In Re: Territorial dispute between Gulf Power Company and Gulf Coast Electric Cooperative, Inc. 84 F.P.S.C. 9:121 (Docket No. 830484-EU, Order No. 13668, Sept. 10, 1984), the Commission observed as follows: “In the past, we have looked to whether the area is urban in determining whether a cooperative is precluded from serving the area. In this case, because the area is rural, we find that the cooperative is not legally prohibited from serving the area.” Id. at 2. (emphasis supplied) In the “Conclusions of Law” section of the same order, the Commission reiterated that “[e]vidence was presented at the hearing that the disputed area is a ‘rural area.’ (TR 247). As such, Chapter 425 would permit Gulf Coast to serve the disputed area.” Id. at 7. (emphasis supplied)

Similarly, in In Re: Petition of Gulf Power Company Involving a Territorial Dispute with Gulf Coast Electric Cooperative, 84 F.P.S.C. 146 (Docket No. 830154-EU, Order No. 12858, Jan. 10, 1984), the Commission concluded that “[b]ecause the disputed area has been determined to be rural for purposes of this proceeding, Chapter 425 does not prohibit the cooperative from serving it.” Id. at 5. (emphasis supplied)

In Petition of Gulf Coast Electric Cooperative to resolve territorial dispute with Gulf Power Company in Washington County, 86 F.P.S.C. 5:132 (Docket No. 850247-EU, Order No. 16105, May 13, 1986) the Commission found that:

The area has no urban characteristics at all. It is unincorporated, and has less than 2500 inhabitants; the nearest urban centers are Chipley and Southport, which are approximately 18 miles away. There is only one paved road within the subdivision boundary. There are no municipal services such as fire protection, water systems, sewer systems, sanitary systems, police protection, storm water drainage, post offices and no other utilities, except possibly telephone service. The “nature of the area” is raised as an issue because of its reference in Section 366.04(2)(e), Florida Statutes. We find that the disputed area is rural for the purposes of this docket. In the past, we have looked to whether the area is urban in determining whether a cooperative is precluded from serving the area. In this case, because the area is rural, we find that the cooperative is not legally prohibited from serving the area.

Id. at 2-3. (emphasis supplied)

In In Re: Petition of West Florida Electric Cooperative Association, Inc. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, 85 F.P.S.C. 11:12 (Docket No. 850048-EU, Order No. 15322, Nov. 1, 1985) the Commission found as follows: “In the past, we have looked to the urbanization of a disputed service territory in determining whether a Cooperative is precluded from serving the area. We find that the area lacks sufficient urban characteristics which would exclude electric service by the Cooperative.” Id. at 2. (emphasis supplied)

In In Re: Petition of Gulf Power Company to Resolve a Territorial Dispute with West Florida Electric Cooperative, Inc. in Holmes County, 88 F.P.S.C. 2:184 (Docket No. 870235-EI, Order No. 18886, Feb. 18, 1988) the Commission determined that “[t]he rural nature of the area, although somewhat mitigated by the area’s proximity to the Town of Ponce de Leon, qualifies it as an area that both utilities are able to serve.” Id. at 4. (emphasis supplied) (Spangenberg)

STAFF: Staff notes that in Order No. 12324, issued August 4, 1983, in Docket No. 830271-EU, In re: Petition of Suwannee Valley Electric Cooperative, Inc. for settlement of a territorial dispute with Florida Power Corporation, an area located in Lafayette County, the Commission stated that Chapter 425, Florida Statutes (F.S.), should be strongly considered. Staff further notes that Section 366.04(2)(e), F.S., gives the Commission jurisdiction over territorial disputes, and that Section 366.04(5), F.S., gives the Commission jurisdiction over the planning, development, and maintenance of a coordinated electric power grid. However, pending further development of the record, staff takes no position on this issue.

ISSUE 2(b): If the Commission determines that it has jurisdiction to enforce or apply provisions of Chapter 425, Florida Statutes, is the Freedom Walk Development a “rural area” as defined in section 425.03(1), Florida Statutes?

POSITIONS

CHELCO: A significant portion of the proposed Freedom Walk development is within the area annexed by the City of Crestview in conjunction with the establishment of a community development district. That portion of the property does not meet the legal definition of “rural area” in Section 425.03(1), Florida Statutes. The remainder of the area within the proposed development plan is not within the area annexed, and thus meets the legal definition of “rural area” in Section 425.03(1), Florida Statutes. (Grantham, Avery, Blake)

GULF: No. Section 425.03(1), Florida Statutes, defines a “rural area” as “[a]ny area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 2,500 persons.” § 425.03(1),

Fla. Stat. According to CHELCO's own petition, the development will be located "within the City of Crestview's corporate limits." (Petition ¶ 6) The City of Crestview is an incorporated city having a population in excess of 2,500 persons. Consequently, the development will not be a "rural area" as defined by section 425.03(1), Florida Statutes. After filing its petition, CHELCO alerted the parties to its belief that the development will also encompass a small number of lots that are presently not located within the Crestview city limits. These lots, totaling approximately three percent of the entire development, are not owned by the developer of Freedom Walk, nor are they included within the boundaries of the Freedom Walk Community Development District that was formed for purposes of financing the development. However, even if the Commission was to accept CHELCO's position that the development will include these outparcels, the outparcels would still be defined as being non-rural under the Commission's own precedent. See, In Re: complaint of Suwannee Valley Electric Cooperative, Inc. against Florida Power & Light Company, 77 F.P.S.C. 321 at * 2 (Docket No. 760510-EU, Order No. 7961, Sept. 16, 1977) ("A subdivision located in the unincorporated area of an immediately adjacent urban area does not exist as a social, economic or commercial unit separate and apart from the adjoining municipality. Such an area would normally be considered part of the suburban territory of the municipality and therefore would not fall within the definition of 'rural area' as stated in section 425.03(1), F.S.") (Spangenberg, Harper)

STAFF: Because it appears that either all of Freedom Walk or substantially all of Freedom Walk is within the city limits of Crestview, an incorporated town with a population in excess of 2,500 persons, it would appear that Freedom Walk would not fit the definition of "rural area" found in Section 425.03(1), Florida Statutes. However, at this time, staff takes no position pending further development of the record.

ISSUE 2(c): If the Commission determines that it has jurisdiction to enforce or apply provisions of Chapter 425, Florida Statutes, and if the Freedom Walk Development is not found to be "rural" in nature, is CHELCO prohibited from serving the Freedom Walk Development by virtue of section 425.02 or 425.04, Florida Statutes?

POSITIONS

CHELCO: No. CHELCO is not prohibited from serving the Freedom Walk development by virtue of Section 425.02 or 425.04, Florida Statutes, nor does Chapter 425 prohibit cooperatives from serving areas that are not "rural areas." The problem inherent in this issue is that it mixes and confuses terms applicable to territorial disputes. In that context, it must be kept in mind that Section 366.04(3)(b) provides that a territorial dispute may include consideration of, among other things, "the degree of urbanization of the area, [and] its proximity to other urban areas." The term "rural" is not used in Section 366.04(3)(b). If the legislature

had intended to apply the Chapter 425 “rural area” definition - or any other definition of “rural” - to territorial disputes, it could have and would have done so. It did not.

In addition, whether the Freedom Walk development property meets the legal definition of a “rural area” under Section 425.03 has little to do with the factual “nature” of the area as urban or rural. The “nature” of Freedom Walk is far from “urban,” and would meet any reasonable person’s idea of being rural “in nature.” Freedom Walk is agricultural and silvicultural property, surrounded by more of the same, interspersed with rural residential properties and sand mine. It has been relatively unchanged since CHELCO began serving it over 60 years ago. It is difficult to imagine a more rural setting. Thus, from a factual perspective, Freedom Walk is not “urbanized,” nor is it located in proximity to other urban areas. Thus, to the extent “rural” is to be used as a synonym of “not urban” when determining the “nature” of the property under Section 366.04, Freedom Walk is “rural” in nature. However, as to the legal question of whether CHELCO is limited by Chapter 425 in its ability to serve outside of “rural areas,” and if so, the scope of any such limitation, the construction, interpretation, and application of that somewhat ambiguous statute is outside of the Commission’s regulatory jurisdiction. (Grantham, Avery, Blake)

GULF: Yes, Section 425.02, Florida Statutes, titled “*Purpose*” provides that rural electric cooperatives such as CHELCO are organized for the sole purpose “[o]f supplying electric energy and promoting and extending the use thereof in rural areas.” § 425.02, Fla. Stat. (emphasis supplied) Section 425.04(4), Florida Statutes, titled “*Powers*” further provides that a cooperative shall have the power “[t]o generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 percent of the number of its members.” § 425.04(4), Fla. Stat. It is clear from the precedent cited in response to Issue 2A above that the Commission has repeatedly looked to whether a disputed area is “rural” as defined by Chapter 425 in determining whether a particular utility is “legally prohibited” from serving the area. Because Freedom Walk is, by definition not “rural”, Chapter 425 presents a complete bar to CHELCO’s serving the development. Further, even if section 425.04(4), Florida Statutes, could be interpreted to allow cooperatives to prospectively serve some persons in non-rural areas, CHELCO presently serves a number of persons in non-rural areas in which number exceeds 10 percent of the number of CHELCO’s members. Thus, even under the most liberal interpretation of the statute, CHELCO is prohibited from serving the development. (Spangenberg)

STAFF: While the Commission may strongly consider Chapter 425, Florida Statutes, the statutes which give the Commission jurisdiction and under which the Commission

receives its powers and authority are Sections 366.04(2)(e) and 366.04(5), Florida Statutes. No position pending further development of the record.

ISSUE 3: What is the nature of the Freedom Walk Development with respect to its population, the type of utilities seeking to serve it, degree of urbanization, proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services?

POSITIONS

CHELCO: The area which will be the location of the Freedom Walk development is currently heavily wooded with no roads other than those on the boundaries and no other utilities other than those serving the three residents on the north part of the property and an existing line of CHELCO's which runs to the center of the property. Although the area north and west of Old Bethel Road, which is served by CHELCO, has low-density residential development, the adjacent land south and east is vacant. The property on which Freedom Walk will be located and that in close proximity to the disputed area is not urbanized. Reasonably foreseeable future requirements of the area for service will be provided by CHELCO, since the existing residential areas to the west and north of Freedom Walk are already served by CHELCO, and will continue to be served as those areas grow. The only foreseeable future requirement for other utility services is water service to the development, which is to be provided by Auburn Water System, a water provider that shares space with CHELCO at its Auburn service center. (Grantham, Avery, Blake)

GULF: The nature of the Freedom Walk development is non-rural. The proposed development lies within the City of Crestview's corporate limits and a Community Development District has been established for the Freedom Walk development. The proposed development will include 489 single family units, 272 multi-family and several commercial buildings. At a conservative two persons per household, the population of the development itself will be in excess of 1,500. CHELCO is a rural electric cooperative seeking to provide electric service to the development against the limitations placed on it by the purpose and powers set forth in Chapter 425, Florida Statutes. Gulf Power is an investor-owned public utility seeking to fulfill its obligation to provide electric service to the development at the request of the prospective customer. The Freedom Walk development is located within the urbanized city of Crestview and is located within one-half mile of other urban neighborhoods located within the municipal boundaries of Crestview. The development, in and of itself, is an urban development which is expected to encompass many urban characteristics including sidewalks, underground electric utilities, water, sewer, cable TV, phone garbage services and municipal police and fire protection. (Spangenberg, Johnson)

STAFF: No position pending further development of the record.

ISSUE 4: What is the existing and planned load to be served in the Freedom Walk Development?

POSITIONS

CHELCO: The existing load to members residing on the property is approximately 53kW. For purposes of responding to staff discovery, both parties have used 4700 kW as the load at full build out. Although both parties acknowledge that load will not occur for several years, CHELCO has provided evidence of its current ability to provide such 4700 kW service within its own capabilities. CHELCO initially projected 3700 kW as the expected load on full build out, which excluded some commercial load, but has since incorporated the full 4700 kW in its load planning and projections presented in this proceeding. It is conceivable that the final load could be less than 4700 kW if the entire planned load does not happen, though that is not reflected in the record. (Avery, Sullivan)

GULF: The existing load to be served in the Freedom Walk development is zero. The planned load to be served in the Freedom Walk development is approximately 4,700 kilowatts. (Johnson, Feazell)

STAFF: It appears that there is no existing load as development has not yet begun. It appears that the projected load is 4.7 MW, with 1.1 of that being commercial. However, pending further development of the record, staff takes no position.

ISSUE 5(a): What are the necessary facilities and associated costs for CHELCO to extend adequate and reliable service to the Freedom Walk Development?

POSITIONS

CHELCO: CHELCO has lines and facilities in place at the property now that would be used to provide adequate and reliable service without the need to extend any of its lines. CHELCO would be able to serve the projected load of 4700kW without any substation additions or additions that are not already anticipated and planned. CHELCO does have in its Construction Work Plan ("CWP") a project that would upgrade the line serving the Freedom Walk area and development, however, the upgrades were planned to handle projected load growth in the area and planned without consideration of any load for Freedom Walk. Although the Freedom Walk load is not specifically identified in the CWP, the upgrade will have the capacity to allow CHELCO to handle Freedom Walk and other anticipated growth in the area for some time to come. The existing facilities are adequate to serve Freedom Walk if the 4700 kW demand at full build out occurred next week with only an acceleration of the previously planned improvements and no costs over what has been planned for with the future upgrades. If Freedom Walk is built in

phases as expected, the existing facilities and normal planned upgrades would be more than adequate to handle the projected load with no changes to the CWP and no additional costs to members as a result of the Freedom Walk load. (Avery, Sullivan)

GULF: CHELCO will be required, at a minimum, to upgrade 1.3 miles of 394 AAAC conductor, to upgrade several components of the Auburn substation, and to install additional capacitors and voltage regulators on its distribution feeder at an aggregate minimum estimated cost of \$377,786 to provide adequate and reliable service to the Freedom Walk development. (Fezell)

STAFF: No position pending further development of the record.

ISSUE 5(b): What are the necessary facilities and associated costs for Gulf to extend adequate and reliable service to the Freedom Walk Development?

POSITIONS

CHELCO: Gulf Power has no presence at or on the area that will become Freedom Walk and at a minimum would have to extend their existing lines 2130 feet from their current line. The cost for this would be at least \$89,000 according to Gulf Power. In addition, according to projections provided by Gulf Power, the Airport Road substation will exceed its rated capacity of 10.5 MVA by 2013 upon the addition of only 1880 kW of demand from Freedom Walk when the load will be 11,430 kW (11.43 MVA). Gulf has admitted that there are no planned upgrades to the Airport Road substation in order to serve Freedom Walk and that it has not even begun to include the anticipated Freedom Walk load in its load studies. Although Gulf has asserted that it will be performing a massive upgrade of the Airport Road substation at some unspecified time in the next 5 years, at a cost of at least \$1,600,000 for that element, it has no current timetable, no current planning document, no current land use approvals, and no current budget.

Despite its earlier admission that it had no plans to upgrade the Airport Road Substation to serve Freedom Walk, Gulf has now proposed a stopgap upgrade to replace the existing 10.5 MVA transformer bank with a 12.5 MVA transformer bank at its Airport Road substation to allow it to serve Freedom Walk, at an alleged cost of \$40,000, a figure that CHELCO believes to be artificially low and based upon the accounting maneuver of reporting the cost of both the existing and replacement transformers at their “fully depreciated” value. Even with that upgrade, the demand in December 2014, with the full 4700 kW Freedom Walk load will be at least 14,690 kW (14.7MVA) far exceeding the “bank rating” that Gulf has equated to the total load capacity (See Gulf’s Response to CHELCO Interrogatory 38). In short, Gulf has no present and identifiable plan that would allow it perform the upgrades required to serve the full projected load. Gulf will

not be able to serve the full projected load of Freedom Walk without costly substation upgrades to their facilities. (Avery, Sullivan)

GULF: Gulf will be required to extend its existing three-phase line approximately 2,130 feet at a cost of \$89,738 to provide adequate and reliable service to the Freedom Walk development. Absent the implementation of the currently planned 46 KV to 115 KV conversion project at Gulf Power's Airport Road substation, Gulf would need to replace a bank of transformers at its Airport Road substation at a cost of \$40,000. (Feazell)

STAFF: No position pending further development of the record.

ISSUE 5(c): What are the necessary facilities and associated costs for CHELCO to provide adequate and reliable service within the Freedom Walk Development?

POSITIONS

CHELCO: Based on parameters agreed to by Gulf Power and CHELCO, the total cost for CHELCO to serve all residential and commercial loads within the Freedom Walk development is \$1,052,598.01. (Avery, Sullivan)

GULF: In order to provide adequate and reliable electric service within the development, CHELCO will install typical underground distribution services equipment for a mixed-use development, including conductor, transformers, pedestals, services and meters at a cost of \$1,052,598. CHELCO and Gulf Power have agreed to a common set of assumptions for the exclusive purpose of determining the cost of installing the necessary facilities within the Freedom Walk development. Gulf Power's use of these assumptions for this purpose shall not constitute a waiver of Gulf Power's position regarding the boundaries of the Freedom Walk development. (Feazell)

STAFF: No position pending further development of the record.

ISSUE 5(d): What are the necessary facilities and associated costs for Gulf to provide adequate and reliable service within the Freedom Walk Development?

POSITIONS

CHELCO: Based on parameters agreed to by Gulf Power and CHELCO, the total cost for Gulf to serve all residential and commercial loads within the Freedom Walk development is \$1,152,515.00. (Avery, Sullivan)

GULF: In order to provide adequate and reliable electric service within the development, Gulf Power will install typical underground distribution services equipment for a mixed-use development, including conductor, transformers, pedestals, services

and meters at a cost of \$1,152,515. CHELCO and Gulf Power have agreed to a common set of assumptions for the exclusive purpose of determining the cost of installing the necessary facilities within the Freedom Walk development. Gulf Power's use of these assumptions for this purpose shall not constitute a waiver of Gulf Power's position regarding the boundaries of the Freedom Walk development. (Feazell)

STAFF: No position pending further development of the record.

ISSUE 6: Will the provision of service to the Freedom Walk Development by CHELCO or Gulf result in uneconomic duplication of any existing facilities?

POSITIONS

CHELCO: Yes. CHELCO has existing single phase and 3 phase lines on and around the area to become the Freedom Walk development and has provided service to members on and adjacent to the property for 60 years. CHELCO has made an investment to serve current and future members in this area, and to serve these members has included projects as part of its normal planning schedule to handle anticipated growth. Gulf Power has no facilities in the area which would be adequate to serve any load at the property and would have to extend its existing lines over 2000 feet just to get to CHELCO's existing point of presence. Gulf Power has never provided service to any portion of the parcel of property now known as Freedom Walk and had no plans to serve this property before Freedom Walk was proposed. To serve Freedom Walk, Gulf Power would have to construct lines that would run parallel to and cross existing 3 phase lines of CHELCO. A determination of whether an extension of facilities constitutes uneconomic duplication must be based on more than whether the party seeking to extend can profit from providing the service, but must take into account the impact to the existing service capabilities and reasonable expectations upon which investments have been made by the existing provider. As applied to this case, any extension of service to Freedom Walk by Gulf Power would constitute an uneconomic duplication of existing facilities. (Grantham, Avery, Blake)

GULF: If service is provided by CHELCO: While Gulf Power does not have full and complete knowledge of the benefits that would accrue to CHELCO should it serve Freedom Walk, it is reasonable to expect that those benefits would be similar to Gulf Power's, if Gulf was to serve Freedom Walk. It is Gulf Power's position that CHELCO's serving Freedom Walk would not constitute an uneconomic duplication of Gulf Power's facilities, as long as the true and full cost for CHELCO to extend adequate and reliable service to Freedom Walk does not significantly exceed the minimum cost of \$377,786 already identified by Gulf Power.

If service is provided by Gulf Power: No. In order to provide service to the Freedom Walk development, Gulf Power will need to extend its existing three-phase feeder west along Old Bethel Road for approximately 2,130 feet at a cost of only \$89,738. CHELCO does own an existing three-phase feeder which, in its extremities, abuts the border of the development. However, CHELCO will, at a minimum, need to upgrade a 1.3 mile segment of its feeder and upgrade other distribution and substation facilities at an aggregate cost of no less than \$377,786 in order to adequately and reliably serve the development. Further, even if the costs of CHELCO's facility upgrades are not considered, Gulf Power's cost to provide service to the development would not constitute "uneconomic duplication" under section 366.04(5), Florida Statutes. The Florida Supreme Court has expressly held that not all duplication is "uneconomic." See, Gulf Coast Electric Cooperative, Inc. v. Clark, 674 So. 2d 120, 123 (Fla. 1996). Moreover, subsequent Commission precedent has recognized that "uneconomic duplication" should be assessed based upon the costs and benefits accruing to the utility seeking to serve the area, such as incremental cost to serve, expected revenues or other exclusive benefits. See, In Re: Petition to Resolve Territorial Dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company, 98 F.P.S.C. 1:647 at *649-50 (Docket No. 930885-EU, Order No. PSC-98-0174-FOF-EU, January 28, 1998) Gulf Witness Spangenberg discusses four tests for assessing uneconomic duplication and demonstrates that Gulf Power's expenditures would be deemed as not "uneconomic" under one or more of the tests. (Spangenberg Direct Testimony at pp. 26-28) (Spangenberg, Feazell)

STAFF: No position pending further development of the record.

ISSUE 7: Is each utility capable of providing adequate and reliable electric service to the Freedom Walk Development?

POSITIONS

CHELCO: As set forth above, CHELCO has existing distribution facilities with the current capacity and capability to provide adequate and reliable electric service to the Freedom Walk Development. CHELCO is a member of PowerSouth Energy Cooperative, a generating and transmission cooperative, and through this arrangement has access to sufficient power to adequately and reliably serve the Freedom Walk development.

As set forth in CHELCO's position to Issue 5(b), there is a significant question as to whether Gulf is currently capable of providing adequate and reliable electric service to the Freedom Walk Development, or has any present and identifiable plan for constructing the upgrades and improvements necessary to allow it to provide such service. (Grantham, Avery, Sullivan)

GULF: Each utility is physically capable of providing adequate and reliable service to the Freedom Walk development. However, CHELCO's cost of doing so will exceed Gulf Power's cost. (Feazell, Spangenberg)

STAFF: No position pending further development of the record.

ISSUE 8: What utility does the customer prefer to serve the Freedom Walk Development?

POSITIONS

CHELCO: Gulf has provided letters from Emerald Coast Partners, LLC that requests service from Gulf Power. Those letters were presumably obtained in a manner consistent with Gulf's training policy to aggressively seek out such "choice" letters for use in a dispute. However, the law is clear that consumers have no organic right to choose their provider of utility service. Rather, customer preference is an issue considered by the Commission in a dispute only when all other items of consideration are equal, and it is the last criteria used; not the first as Gulf Power would argue. In this case, issues of existing service capabilities, cost of providing service, uneconomic duplication of facilities, and the non-urban nature of the disputed area demonstrate that all issues in this docket are not equal. Therefore, customer preference should not be given any consideration.

Further, the Commission should give lesser weight to the customer preference in this docket, as it is the developer and not the ultimate end user customers who would be expressing a preference. In such cases the developer is not an "agent" or surrogate for the customer, since the interests of the developer may be, and generally are, divergent from those of the end users. Gulf Power has offered an argument that customer choice should dictate which utility serves the area of Freedom Walk. However, the law is clear that consumers have no organic right to choose their provider of utility service. (Grantham, Avery, Blake)

GULF: The customer, Emerald Coast Partners, LLC, has unequivocally indicated its preference that Gulf Power serve the Freedom Walk development. As the developer, Emerald Coast Partners, LLC, will be responsible for overseeing and orchestrating all aspects of the property's development on behalf of the residents who will ultimately reside within the development. Consequently, it is appropriate that Emerald Coast Partners, LLC's preference be given significant weight in the resolution of this dispute. See, In re Petition of West Florida Electric Cooperative Ass'n. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, Florida, 86 F.P.S.C. 6:270 at *271 (Docket No. 850048-EU, Order No. 16246, June 17, 1986 (recognizing that it is "[a]cceptable to consider the preference of the developer, who in many cases pays for the CIAC for installed services before his lots are placed for sale...") (Johnson)

STAFF: No position pending further development of the record.

ISSUE 9: Which utility should be awarded the right to serve the Freedom Walk Development?

POSITIONS

CHELCO: CHELCO. (Grantham, Avery, Blake)

GULF: Gulf Power Company. (Jacob, Spangenberg)

STAFF: No position pending further development of the record.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Leigh V. Grantham	CHELCO	LVG-1	Aerial map of area
Leigh V. Grantham	CHELCO	LVG-2	Aerial with overlay of planned development
Leigh V. Grantham	CHELCO	LVG-3	Franchise Agreement with City of Crestview
Leigh V. Grantham	CHELCO	LVG-4	Photos of property from the ground
Leigh V. Grantham	CHELCO	LVG-5	Gulf Power e-mail about service
Jonathan Matthew Avery	CHELCO	JMA-1	Plat Depicting Area in Dispute
Jonathan Matthew Avery	CHELCO	JMA-2	Map showing active accounts
Jonathan Matthew Avery	CHELCO	JMA-3	Map depicting CHELCO's 1PH Line
Jonathan Matthew Avery	CHELCO	JMA-4	CHELCO'S Cost Estimate
Jonathan Matthew Avery	CHELCO	JMA-5	CHELCO's Line Extension Policy
Jonathan Matthew Avery	CHELCO	JMA-6	Map of CHELCO and Gulf Existing Lines

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Rebuttal</u>			
Jonathan Matthew Avery	CHELCO	JMA-7	Gulf Power Interrogatory Responses
<u>Direct</u>			
Jacquelyn Nicole Sullivan	CHELCO	JNS-1	Resume
Jacquelyn Nicole Sullivan	CHELCO	JNS-2	Portions of Construction work plan
Jacquelyn Nicole Sullivan	CHELCO	JNS-3	July 7, 2010 Study (3700kW)
Jacquelyn Nicole Sullivan	CHELCO	JNS-4	February 1, 2011 Study (4700 kW)
<u>Supplemental Direct</u>			
Jacquelyn Nicole Sullivan	CHELCO	JNS-4 (Revised)	April 4, 2011 Study (25 MVA)
<u>Rebuttal</u>			
Dr. Martin J. Blake	CHELCO	MJB-1	Prior testimony of Dr. Martin J. Blake
<u>Direct</u>			
B.H. Johnson, Jr.	Gulf	BHJ-1	Letters from Freedom Walk developer requesting electric service from Gulf Power Company
W.M. Fezell	Gulf	WMF-1	Gulf and CHELCO 3-phase circuit maps near Freedom Walk development
W.M. Fezell	Gulf	WMF-2	CHELCO's engineering study dated July 7, 2010
W.M. Fezell	Gulf	WMF-3	CHELCO's Normandy Road upgrade cost estimate
W.M. Fezell	Gulf	WMF-4	CHELCO's Construction Work Plan 2010-2014

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Rebuttal</u>			
W.M. Feazell	Gulf	WMF-5	CHELCO's Required Upgrades
<u>Direct</u>			
R.K. Harper	Gulf	RKH-1	Curriculum vitae and Bluewater Bay demographics
T.S. Spangenberg, Jr.	Gulf	TSS-1	Freedom Walk Community Development District Ordinance No. 1378; Maps and definitions of Bluewater Bay, Greater Crestview, Greater DeFuniak Springs, Greater Freeport; Number of persons served by CHELCO in non-rural areas
<u>Rebuttal</u>			
T.S. Spangenberg, Jr.	Gulf	TSS-2	Aerial Photo of Freedom Walk Area
T.S. Spangenberg, Jr.	Gulf	TSS-3	March 2008 Matthew Avery E-mail
T.S. Spangenberg, Jr.	Gulf	TSS-4	CHELCO's 2009 Load Forecast
<u>CHELCO's Stipulated Exhibits (CSE)</u>			
	CHELCO	CSE-1	Deposition Transcript and Exhibits for Theodore S. Spangenberg, Jr.
	CHELCO	CSE-2	Deposition Transcript and Exhibits for W. Mike Feazell
	CHELCO	CSE-3	Deposition Transcript of P. Bernard Jacob.
	CHELCO	CSE-4	Gulf Power Responses to CHELCO's First Set of Interrogatories (Nos. 1-30)

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
	CHELCO	CSE-5 Gulf Power Responses to CHELCO's Second Set of Interrogatories (Nos. 31-51)
	CHELCO	CSE-6 Gulf Power Response to CHELCO's Production of Documents, Pages 14 and 15
	CHELCO	CSE-7 CHELCO's Petition
<u>Gulf's Stipulated Exhibits (GSE)</u>		
	Gulf	GPSE-1 CHELCO's Responses to Gulf's First Set of Interrogatories (Nos. 1-22, July 29, 2010)
	Gulf	GPSE-2 CHELCO's Objections and Responses to Gulf's Second Set of Interrogatories (Nos. 23-51, September 23, 2010)
	Gulf	GPSE-3 CHELCO's Supplemental Responses to Gulf's Second Set of Interrogatories (Nos. 23-51, November 2, 2010)
	Gulf	GPSE-4 CHELCO's Supplemental Responses to Gulf's Second Set of Interrogatories (No. 51, January 3, 2011)
	Gulf	GPSE-5 CHELCO'S Supplemental Objections to Gulf's Second Set of Interrogatories (February 8, 2011)

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
Gulf	GPSE-6	CHELCO's Preliminary Objections Responses to Gulf's Third Set of Interrogatories (Nos. 52-55, November 29, 2010)
Gulf	GPSE-7	CHELCO's Objections and Responses to Gulf's Third Set of Interrogatories (Nos. 52-55, December 6, 2010)
Gulf	GPSE-8	CHELCO's Supplemental Responses to Gulf's Third Set of Interrogatories (No. 55, February 15, 2011)
Gulf	GPSE-9	CHELCO's Objections and Responses to Gulf's Fourth Set of Interrogatories (Nos. 56-63, February 7, 2011)
Gulf	GPSE-10	CHELCO's Responses to Gulf's Fifth Set of Interrogatories (Nos. 64-66)
Gulf	GPSE-11	CHELCO's Responses to Gulf's Request for Admissions (Nos. 1-10, July 29, 2010)
Gulf	GPSE-12	Deposition Transcript and Exhibits of CHELCO's Witness Leigh Grantham (March 30, 2011)
Gulf	GPSE-13	Deposition Transcript and Exhibits of CHELCO's Witness Jonathan Matthew Avery (March 30, 2011)

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
	Gulf	GPSE-14 Deposition Transcript and Exhibits of CHELCO's Witness Jonathan Avery (April 21, 2011)
	Gulf	GPSE-15 Deposition Transcript and Exhibits of CHELCO's Witness Jacquelyn N. Sullivan (March 31, 2011)
	Gulf	GPSE-16 Deposition Transcript and Exhibits of CHELCO's Witness Jacquelyn N. Sullivan (April 21, 2011)
	Gulf	GPSE-17 Deposition Transcript and Exhibits of CHELCO's Witness Dr. Martin J. Blake (May 6, 2011)
	Gulf	GPSE-18 Response of Gulf to CHELCO's Petition
	Gulf	GPSE-19 CHELCO's Response to Gulf Power's Fifth Request for Production of Documents (No. 26, May 10, 2011)

Staff's Stipulated Exhibit List

57	STAFF	Staff's Exhibit #57	CHELCO's Response to Staff's First Set of Interrogatories (No. 1) [<i>Bates Nos. 0001-0015</i>]
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<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
58	STAFF	Staff's Exhibit #58	CHELCO's Responses to Staff's Second Set of Interrogatories (Nos. 2-4) [Bates Nos. 0016-0027]
59	STAFF	Staff's Exhibit #59	CHELCO's Response to Staff's First Request for Production of Documents (No. 1) [Bates Nos. 0028-0038]
60	STAFF	Staff's Exhibit #60	Gulf's Response to Staff's First Set of Interrogatories (No. 1) [Bates Nos. 0039-0045]
61	STAFF	Staff's Exhibit #61	Gulf's Responses to Staff's Second Set of Interrogatories (Nos. 2-4) [Bates Nos. 0046-0052]
62	STAFF	Staff's Exhibit #62	Gulf's Response to Staff's First Request for Production of Documents (No. 1) [Bates Nos. 0053-0057]

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Issues 5(c) and 5(d) – the parties stipulate that the cost of necessary facilities for CHELCO and Gulf to provide adequate and reliable service within the Freedom Walk Development is that set forth by each of the parties as to its respective cost. Therefore, there will be no additional testimony or evidence presented at the hearing as to Issues 5(c) and 5(d).

As stated earlier under Section VI., Order of Witnesses, the parties and staff have agreed that the testimony and exhibits of CHELCO witnesses Sullivan and Blake and Gulf witnesses Jacob, Johnson, and Harper may be admitted, and, if no commissioners require their presence, they may be excused from the hearing.

As noted above, the parties and staff have stipulated the exhibits listed as CHELCO's Stipulated Exhibits (CSE) 1-7, Gulf's Stipulated Exhibits (GSE) 1-18, and Staff's Stipulated Exhibits 57-62.

XI. PENDING MOTIONS

On May 6, 2011, Gulf filed its Motion for Summary Final Order.

On May 9, 2011, Gulf filed its Motion to Strike.¹

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT

There are no known objections to witness' qualifications as an expert at this time.

XIV. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

CHELCO shall have until the beginning of the hearing to file its responses to Gulf's Motion for Summary Final Order and Gulf's Motion to strike.

CHELCO's request that it be allowed to use a short video as part of its opening statement is granted, with the understanding that the combined video and oral statement would not exceed 10 minutes together.

¹ Gulf moves to strike all testimony of CHELCO which "characterize the area in dispute as non-urban, rural or otherwise use the terms 'Freedom Walk,' 'disputed area' or 'area in dispute' in a context that infers a reference to anything other than Freedom Walk as fully developed."

Pursuant to the stipulation of parties and staff that the testimony and exhibits of CHELCO witnesses Sullivan and Blake and Gulf witnesses Jacob, Johnson, and Harper may be admitted, those witnesses may be excused from the hearing if no commissioners require their presence.

CHELCO's request that the direct and supplemental testimony of its witness, Jacquelyn Nicole Sullivan, be concluded by no later than the morning of May 18, 2011 (second day of the hearing), as she has a previously scheduled conflict requiring travel the afternoon of May 18, 2011 is granted, if she is not ultimately excused from the hearing.

CHELCO's request that its rebuttal witness, Dr. Martin J. Blake, be required to attend the hearing only on May 18, 2011, due to previously scheduled commitments is granted, if he is not ultimately excused from the hearing.

Gulf's request that it be allowed to use a demonstrative exhibit showing both Gulf's and Chelco's existing 3-phase and single-phase lines and connections, and an aerial photograph of Bluewater Bay is granted.


Staff's request that it be allowed to use two demonstrative exhibits, with one being Exhibit "A" attached to CHELCO's Petition -- a map showing Freedom Walk and the city limits of Crestview in the immediate area of Freedom Walk, and the second one being Exhibit "D" attached to CHELCO's Petition -- an aerial photograph of the area around Freedom Walk showing CHELCO's and Gulf's existing facilities with Freedom Walk shown in white in the center is granted.

CHELCO's request that, in addition to Exhibits "A" and "D" from CHELCO's petition requested by staff, that it be allowed to use Exhibits "B," "C" and "E" from its petition as demonstrative exhibits at hearing is granted.

It is therefore,

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 12th day of May, 2011.



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(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.